

EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 1-4-99)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 07-0608-01E
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For use by Office of Administrative Law (OAL) only

2007 JUN -8 AM 10:45
OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY California Integrated Waste Management Board	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER ()	FAX NUMBER (Optional) ()
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Mammalian Tissue Composting	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

SECTION(S) AFFECTED (List all section number(s) individually)	ADOPT
	AMEND Title 14 sections 17210.2, 17210.4, 17855.2, 17862, and 17867
	REPEAL
TITLE(S)	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code, § 11346)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code, §§ 11349.3, 11349.4)	<input checked="" type="checkbox"/> Emergency (Gov. Code, § 11346.1(b))	<input type="checkbox"/> Emergency Readopt (Gov. Code, § 11346.1(h))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1)
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.2 - 11346.9 prior to, or within 120 days of, the effective date of the regulations listed above.				
<input type="checkbox"/> Print Only	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)	<input type="checkbox"/> Other (specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

5. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code, §§ 11343.4, 11346.1(d))		
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> Effective other (Specify) _____


6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Elliot Block	TELEPHONE NUMBER () 341-6080	FAX NUMBER (Optional) () 319-7138	E-MAIL ADDRESS (Optional) eblock@ciwmb.ca.gov
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8.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE  Elliot W. Block	DATE June 8, 2007
TYPED NAME AND TITLE OF SIGNATORY Elliot Block, Chief Counsel	

1 Chapter 3. Minimum Standards for Solid Waste Handling and Disposal

2
3 Article 3. Emergency Waiver of Standards

4
5 Section 17210.2 Purpose and Limitation of Emergency Waiver.

6 (a) An emergency waiver may only be issued when there has been a proclamation of a state of
7 emergency or local emergency, as those terms are defined in this Article.

8 (b) An EA may approve and issue a waiver for the express purpose of enabling an operator of an
9 existing permitted solid waste facility ~~or, a locally-approved temporary transfer or processing site, or a~~
10 locally-approved temporary compostable material handling activity, to accept disaster debris and
11 other nonhazardous wastes, in a manner not consistent with the terms and conditions of the relevant
12 solid waste facilities permit or applicable state minimum standards, during the recovery phase of a
13 state of emergency or local emergency.

14 (c) The waiver may apply to specified state minimum solid waste standards or a specific term or
15 condition of a solid waste facilities permit at an existing solid waste facility ~~or, a locally-approved~~
16 temporary transfer or processing site, or a locally-approved temporary compostable material handling
17 activity, which are related to the following: the origin of waste; the rate of inflow for storage, transfer,
18 processing, or disposal of waste; the type and moisture content of solid waste; the hours of facility
19 operation; and the storage time before transfer, processing, or disposal of nonhazardous waste.

20 (d) The effective period of an initial waiver, once granted by the EA, shall not exceed 120 days. Upon
21 receipt of the reports required in section 17210.5, the EA may extend the effective period of a waiver,
22 as necessary, to assist in the recovery from an emergency.

23 (e) All other state minimum standards and permit conditions which are not the subject of the waiver
24 shall remain in effect.

25 (f) A waiver may be modified, canceled, or revoked by the EA without advance notice should the EA
26 determine that any of the following occurs:

27 (1) The use of such a waiver will cause or contribute to a public health and safety or environmental
28 problem;

29 (2) The terms of the waiver are not being used expressly to handle the state of emergency or local
30 emergency and are not in the best interest of the public health and safety;

31 (3) The waiver is no longer necessary;

32 (4) The solid waste facility operator is not utilizing disaster debris diversion programs to the extent
33 feasible.

34
35 NOTE: Authority cited: Sections 40502 and 43035, Public Resources Code. Reference: Sections 43002, 43020, 43021 and
36 43035, Public Resources Code.

37
38 Section 17210.4 Granting an Emergency Waiver.

39 (a) The EA may grant a waiver during a proclamation of emergency upon making the following
40 findings:

41 (1) If the waiver is for an existing permitted solid waste facility ~~The~~ operator applying for the waiver
42 holds a valid solid waste facilities permit;

43 (2) The waiver will not pose a threat to public health and safety or the environment;

44 (3) The operator identifies and implements, to the extent feasible, diversion programs to maximize
45 diversion through reuse, recycling, or composting of disaster-related waste.

46 (b) Within 7 days of receipt of the solid waste facility operator's request for a waiver, the EA shall
47 notify the solid waste facility operator in writing whether or not the request for waiver has been
48 granted. If the proposed waiver is not granted, the EA's notification shall contain reasons for the
49 denial. The solid waste facility operator may reapply for the waiver at a later date or submit necessary
50 documentation to receive the waiver immediately.

51
52 NOTE: Authority cited: Sections 40502 and 43035, Public Resources Code. Reference: Sections 40002, 43020, 43021 and
53 43035, Public Resources Code.

54
55 Chapter 3.1. Compostable Materials Handling Operations and Facilities Regulatory
56 Requirements

57
58 Article 2. Regulatory Tiers for Composting Operations and Facilities

1 **Section 17855.2. Prohibitions.**

- 2 (a) The composting of unprocessed mammalian tissue, including but not limited to, flesh, organs,
3 hide, blood, bone and marrow is prohibited, except when from the food service industry, grocery
4 stores, or residential food scrap collection, or as part of a research composting operation for the
5 purpose of obtaining data on pathogen reduction in accordance with section 17862. Carcasses of
6 animals with any contagious disease shall not be composted, unless approved in writing by the
7 California Department of Food and Agriculture, Division of Animal Industry.
8 (b) The composting of medical waste is prohibited.
9 (c) The composting of hazardous waste is prohibited.

10
11 NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021,
12 Public Resources Code.

13
14 **Section 17862. Research Composting Operations.**

- 15 (a) An operator conducting research composting operations shall not have more than 5,000 cubic-
16 yards of feedstock, additives, amendments, chipped and ground material, and compost on-site at any
17 one time, and shall comply with the EA Notification requirements set forth in Title 14, California Code
18 of Regulations, Division 7, Chapter 5.0, Article 3.0 (commencing with section 18100), except as
19 otherwise provided by this Chapter.
20 (b) An operator conducting research composting operations utilizing within-vessel processing, may
21 exceed 5,000 cubic-yards of feedstock, additives, amendments, chipped and ground material and
22 compost, if the EA determines that such increased volume will not pose additional risk to the public
23 health, safety and the environment.
24 (c) In addition to the EA Notification requirements set forth in Title 14, California Code of Regulations,
25 Division 7, Chapter 5.0, Article 3.0, section 18103.1 (a)(3), the operator shall provide a description of
26 the research to be performed, research objectives, methodology/protocol to be employed, data to be
27 gathered, analysis to be performed, how the requirements of this subchapter will be met, and the
28 projected timeframe for completion of the research operation.
29 (d) The EA Notification for a research composting operation shall be reviewed after each two-year
30 period of operation. Review criteria shall include the results and conclusions drawn from the
31 research.
32 (e) Research composting operations that will be using unprocessed mammalian tissue as a feedstock
33 for the purpose of obtaining data on pathogen reduction shall satisfy the following additional
34 requirements:
35 (1) Unprocessed mammalian tissue used as feedstock shall be generated from on-site agricultural
36 operations, and all products derived from unprocessed mammalian tissue shall be beneficially used
37 on-site.
38 (2) The operator shall prepare, implement and maintain a site-specific, research composting
39 operation site security plan. The research composting site security plan shall include a description of
40 the methods and facilities to be employed for the purpose of limiting site access and preventing the
41 movement of unauthorized material on to or off of the site.
42 (2) The EA Notification for the research composting operation using unprocessed mammalian tissue
43 as feedstock and documentation of additional requirements of this section shall be reviewed after
44 each six month period of operation.
45 (f) The operator shall submit all additional documentation required by subsections (c) and (e)(2) to the
46 EA with the EA Notification and prior to the composting of any feedstock. The EA shall determine that
47 the EA Notification for research composting operations is complete and correct only if the additional
48 documentation requirements of this section have been met.

49
50 NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021,
51 Public Resources Code.

52
53 **Article 6. Composting Operating Standards**

54
55 **Section 17867. General Operating Standards.**

- 56 (a) All compostable materials handling operations and facilities shall meet the following requirements:
57 (1) The composting of mammalian flesh, organs, unprocessed hide, blood, bone, and marrow is
58 prohibited, except when from the residential sector or food service industry. Carcasses of animals
59 with any contagious disease shall not be composted, unless approved in writing by the California

1 Department of Food and Agriculture, Division of Animal Industry, All handling activities are prohibited
2 from composting any material specified in section 17855.2 of this Chapter.

3 (2) All handling activities shall be conducted in a manner that minimizes vectors, odor impacts, litter,
4 hazards, nuisances, and noise impacts; and minimizes human contact with, inhalation, ingestion, and
5 transportation of dust, particulates, and pathogenic organisms.

6 (3) Random load checks of feedstocks, additives, and amendments for contaminants shall be
7 conducted.

8 (4) Contamination of compostable materials that has undergone pathogen reduction, pursuant to
9 section 17868.3 of this Chapter, with feedstocks, compost, or wastes that have not undergone
10 pathogen reduction, pursuant to section 17868.3 of this Chapter, or additives shall be prevented.

11 (5) Unauthorized human or animal access to the facility shall be prevented.

12 (6) Traffic flow into, on, and out of the composting operation or facility shall be controlled in a safe
13 manner.

14 (7) All compostable materials handling operations and facilities, that are open for public business,
15 shall post legible signs at all public entrances. These signs shall include the following information:

16 (A) name of the operation or facility,

17 (B) name of the operator,

18 (C) facility hours of operation,

19 (D) materials that will and will not be accepted, if applicable,

20 (E) schedule of charges, if applicable, and

21 (F) phone number where operator or designee can be reached in case of an emergency.

22 (8) The operator shall provide fire prevention, protection and control measures, including, but not
23 limited to, temperature monitoring of windrows and piles, adequate water supply for fire suppression,
24 and the isolation of potential ignition sources from combustible materials. Firelanes shall be provided
25 to allow fire control equipment access to all operation areas.

26 (9) The operator shall provide telephone or radio communication capability for emergency purposes.

27 (10) Physical Contaminants and refuse removed from feedstock, compost, or chipped and ground
28 material shall be removed from the site within 7 days and transported to an appropriate facility.

29 (11) Enclosed operations and facilities shall provide ventilation to prevent adverse public health
30 effects from decomposition gases.

31 (12) The operator shall ensure that leachate is controlled to prevent contact with the public.

32 (13) The operator shall prevent or remove physical contaminants in compost and chipped and ground
33 materials that may cause injury to humans.

34 (14) An attendant shall be on duty during business hours if the operation or facility is open to the
35 public.

36
37 NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021,
38 Public Resources Code.

FINDING OF EMERGENCY

REVISIONS TO EXISTING REGULATIONS PERTAINING TO THE HANDLING OF COMPOSTABLE MATERIALS AND COMPOSTING FACILITIES AND OPERATIONS

FINDING OF EMERGENCY

The California Integrated Waste Management Board (CIWMB) finds that an emergency exists, and that the attached proposed revisions to regulation are necessary to address the need for immediate action to avoid serious harm to the public peace, health and safety, or general welfare.

SPECIFIC FACTS SHOWING THE NEED FOR IMMEDIATE ACTION

The CIWMB is charged with exercising legal authority that ensures an effective and coordinated approach to the safe management of solid waste generated within the state. The CIWMB is further charged with preserving public health and safety, and the environment. To facilitate this, the CIWMB is authorized to adopt rules and regulations to carry out this responsibility.

The CIWMB regulates that handling of compostable materials and facilities and operations where this handling occurs. In regulations adopted in 1998, the CIWMB included a prohibition on composting of unprocessed mammalian tissue. The basis for this regulatory prohibition appears to be centered on concerns related to the control of Bovine Spongiform Encephalopathy (BSE) or "Mad Cow Disease." Recent discussions with animal health specialists at CDFA suggest that BSE should not be considered as a primary justification for a prohibition on the composting of unprocessed mammalian tissue. CDFA has not received any documentation that indicates BSE occurred in California.

Supported by a recent authorization of the State Veterinarian to approve temporary research projects for alternative methods of animal tissue disposal, CDFA and CIWMB staff find that additional studies and resultant data are needed so that both agencies can determine whether to allow generalized composting of feedstock containing large amounts of unprocessed mammalian tissue. Representatives from CDFA and the University of California, Davis expressed support for a relaxing of the CIWMB's current prohibition so that the State can allow mammalian tissue composting at on-farm research projects. The proposed regulations would allow for such research under limited conditions; they would not allow large-scale commercial composting with this feedstock at this time.

Additionally, most agricultural operations tend to rely on rendering plants to manage day-to-day or "normal" animal deaths. However, with the closure of rendering plants and diminished capacity and increased cost of disposal options, several regions in California lack the resources to handle their normal daily mortalities. CIWMB staff has received input from Local Enforcement Agencies and agricultural industry representatives about their interest in composting unprocessed mammalian tissue. Therefore, staff determined that there is an imminent need to manage this agricultural waste stream ahead of the upcoming hot season.

As was seen in the summer of 2006, the already taxed rendering facilities of the San Joaquin Valley were unable to process the nearly 20,000 head of dairy cows that perished due to heat exposure. Large mammal disposal of this magnitude tests the regional resources designed to protect public health and the environment. While these regulations would not provide a total resolution if such a die-off occurred in the near future, they would provide both an alternative management method for some mortalities and provide CDFA and the CIWMB with data on whether the regulations should be subsequently modified to allow for increased feedstock in the future.

Last summer's heat-related emergency also revealed a separate but related issue regarding the composting of mammalian tissue. During a state-declared emergency, the Governor has broad powers (under Government Code 8567) to suspend any state laws that are necessary to mitigate the emergency. The Government Code does not afford the same broad powers to a local government during a locally-declared emergency. Emergency responders, local governments, and local and state regulatory agencies must find other means to comply with state laws during a locally-declared emergency. The devastating animal mortalities suffered during the heat wave of 2006 identified a need to allow for emergency waivers of certain standards and permit terms and conditions when local officials declare a local emergency. CIWMB staff also included in the emergency regulations an option allowing regulated composting as an emergency measure to handle unprocessed mammalian tissue as an alternative to disposal. Specifically, existing CIWMB regulations authorize the LEA to waive state minimum standards and permit conditions at a locally-approved temporary transfer/processing site for very specific purposes. All other standards must remain in effect. The proposed regulations would additionally authorize the LEA to waive state minimum standards (including the mammalian tissue composting prohibition) and permit conditions at existing permitted composting facilities and would allow the region to establish a locally-declared temporary composting activity. Again, the waiver of standards and permit conditions would apply to a very narrow focus for a limited timeframe with all other standards remaining in effect. This would proactively address upcoming summer temperatures and avoid the possible repetition of the heat-related local emergencies experienced in the summer of 2006.

AUTHORITY AND REFERENCE CITATIONS

Authority: Sections 40502, 43020, 43021, and 43035 of the Public Resources Code

Reference: Sections 40002, 43020, 43021, and 43035 of the Public Resources Code

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law and Regulation: Public Resources Code section 43020 requires the CIWMB to adopt and revise regulations, which set forth minimum standards for solid waste handling, transfer, composting, transformation, and disposal.

Existing regulations currently prohibits the composting of unprocessed mammalian tissue (14 CCR section 17855.2).

Comparable Federal Regulation or Statute: There are no existing, comparable federal regulations or statutes.

Policy Statement Overview: The proposed emergency regulations will allow research projects to compost unprocessed mammalian tissue for the purposes of obtaining data on pathogen reduction. Additionally, the proposed emergency regulations will allow regulated composting as an emergency measure to handle unprocessed mammalian tissue as an alternative to disposal.

LOCAL MANDATE DETERMINATION

The CIWMB has determined that the regulations will not impose a mandate on school districts, or a cost to school districts that are required to be reimbursed in accordance with Government Code, Division 4, Part 7 (commencing with Section 17500). The CIWMB has determined that the regulations will impose a mandate on local agencies that choose to undertake a research composting operation, but the costs to the local agencies are not required to be reimbursed in accordance with Government Code, Division 4, Part 7.

COST TO STATE AGENCIES AND STATE/FEDERAL FUNDING

The CIWMB estimates that the proposed regulations will not result in a change in costs to State agencies other than a nominal impact to CIWMB staff, which can be absorbed within existing budget resources. There is no impact on federal funding as there is no funding from the federal government for this work.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

CIWMB staff has determined that adoption of the proposed regulations:

- (1) will not impose any costs or savings on school districts;
- (2) will place a mandate on local agencies choosing to undertake a research composting operation. CIWMB staff estimates the costs to local agencies at \$2,500 per year per research operation undertaken. Local governmental agencies are authorized by Public Resources Code, sections 40057 and 40059 to charge a fee for providing these services.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES/REPORTS

The CIWMB did not rely on any technical, theoretical, or empirical study, report, or similar document in adopting these regulations.